# **SECTION .0700 - MITIGATION POLICY**

## 15A NCAC 07M .0701 DECLARATION OF GENERAL POLICY

- (a) It is the policy of the State of North Carolina to require that adverse impacts to coastal lands and waters be mitigated or minimized through proper planning, site selection, compliance with standards for development, and creation or restoration of coastal resources. Coastal ecosystems shall be protected and maintained as complete and functional systems by mitigating the adverse impacts of development as much as feasible by enchancing, creating, or restoring areas with the goal of improving or maintaining ecosystem function and areal proportion.
- (b) The CRC shall apply mitigation requirements as defined in this Section consistent with the goals, policies and objectives set forth in the Coastal Area Management Act for coastal resource management and development. Mitigation shall be used to enhance coastal resources and offset any potential losses occurring from approved and unauthorized development. Proposals to mitigate losses of coastal resources shall be considered only for those projects shown to be in the public interest, as defined by the standards in 15A NCAC 7M .0703, and only after all other reasonable means of avoiding or minimizing such losses have been exhausted.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;

Eff. January 1, 1984;

Amended Eff. September 1, 1985.

### 15A NCAC 07M .0702 DEFINITIONS

For the purposes of this policy statement mitigation is defined as the enhancement, creation, or restoration of coastal resources to maintain the characteristics and processes of coastal ecosystems such as natural biological productivity, habitat and species diversity, physical integrity, water quality and aesthetics.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; Eff. January 1, 1984.

### 15A NCAC 07M .0703 MITIGATION CANDIDACY

- (a) The CRC may approve a development project for mitigation candidacy if the applicant can demonstrate that all of the following criteria can be met:
  - (1) there is no reasonable or prudent alternate design or location for the project that would avoid the losses to be mitigated;
  - (2) the entire project for which the permit is requested is dependent upon being located within or in close proximity to public trust waters and coastal wetlands;
  - (3) benefits to the public interest will clearly outweigh the long range adverse effects to the environment. A benefit to the public interest may be established by a project which has been clearly shown to be the least damaging alternative and which:
    - (A) if publicly funded creates benefits of national or state importance. This category may include but is not limited to public roadways, navigation projects, state ports, and projects designed to provide public access to the water;
    - (B) if privately funded provides increased access opportunities available to the general public for free or for a nominal fee, or provides significant economic benefits to the state or community in accord with the local land use plan;
  - (4) all reasonable means and measures to lessen the impacts of the project have been incorporated into the project design.
- (b) Mitigation may also be the basis for CRC approval for projects which cannot meet all the criteria of 15A NCAC 7M .0703(a) if the CRC determines that public benefits of the project and enhancement and protection of the environment overwhelmingly outweigh environmental losses.
- (c) Mitigation candidacy may be considered by the CRC during the permit processing time prescribed in 15A NCAC 7J .0204, in accordance with the procedures set out in 15A NCAC 7J .0600 concerning declaratory rulings. The applicant may request a declaratory ruling on the applicability of the mitigation policy as set forth in 15A NCAC 7M .0703(a) provided that

the applicant agrees that the permit processing time period will not run during the pendency of the declaratory ruling consideration. If a declaratory ruling is to be issued pursuant to the applicant's request, a public meeting will be held to discuss the proposed project and to assist the Commission in obtaining the information necessary to make the declaratory ruling, and to receive comments from the public prior to presenting the ruling request to the Commission. Information concerning the proposed mitigation may also be introduced at the meeting. CRC approval of the mitigation candidacy is binding on the Commission and the person requesting it, in accordance with 15A NCAC 7J .0603(e).

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; Eff. January 1, 1984; Amended Eff. September 1, 1985.

#### 15A NCAC 07M .0704 POLICY STATEMENTS

- (a) The following forms of mitigation are ranked in order of preference:
  - (1) Enhancement of coastal resources with created or restored systems determined to be potentially more productive of the resources characteristic of unaltered North Carolina ecosystems than those destroyed.
  - (2) Creation or restoration of an area of similar ecological utility and potential biological value than that destroyed or altered.
  - (3) Creation or restoration of an area with a desirable but different ecological function or potential than that destroyed or altered.
  - (4) The following forms of mitigation will be considered even though they do not meet the definition in 15A NCAC 7M .0702. They are actions which by themselves shall not be deemed adequate to offset habitat losses, but may be used in combination with Subparagraphs (a) (1) through (3) to achieve the stated goal of these Rules.
    - (A) Acquisition for public ownership of unique and ecologically important systems not protected by state and/or federal regulatory programs. The type of impacts to be mitigated and the quality of the area to be acquired will be considered on a case-by-case basis.
    - (B) Transfer of privately owned lands subject to state and federal regulatory control into public ownership.
    - (C) Provisions of funds for research or for management programs.
    - (D) Increased public access for recreational use.
- (b) Mitigation proposals may be the basis for approval of a development which is otherwise in conflict with general or specific use standards set forth in 15A NCAC 7H .0208. If a development represents no significant loss to coastal resources, the mitigation proposal must be on-site, or proximate thereto, and must be designed to enhance the coastal environment.
- (c) Mitigation proposals to offset losses associated with publicly funded projects shall be reviewed by the staff with the sponsoring agency and incorporated into project plans.
- (d) Approved mitigation proposals for all categories of development shall become a part of permit conditions according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126 and shall be memorialized in a mitigation agreement which will constitute a contract between the applicant and the CRC.
- (e) Those projects consistent with the review criteria for permit approval shall be exempt from mitigation requirements.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; Eff. January 1, 1984.

## 15A NCAC 07M .0705 REVIEW PROCEDURES

Initial denials of mitigation candidacy, pursuant to the procedures of 15A NCAC 7M .0703(c), and permit denials, based on inconsistency with 15A NCAC 7H .0208, which are to be offset by mitigation proposals shall be reviewed by the CRC through the appeal procedures set forth in 15A NCAC 7J .0300.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; Eff. January 1, 1984; Amended Eff. November 1, 1984.